

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)	
)	
v.)	NO. 2:10-CR-113
)	
JAMES H. CODY, JR.)	

ORDER

This criminal matter is before the Court to consider the Report and Recommendation of the United States Magistrate Judge dated December 20, 2010, his Supplemental Report and Recommendation dated December 22, 2010, and his Second Supplemental Report and Recommendation dated January 4, 2011.¹ [Docs. 17, 19 and 25]. The Magistrate Judge recommends that the defendant's motion to suppress all evidence seized during a search of his residence on April 9, 2009, be denied.

The defendant has filed an objection to these reports. [Doc. 23]. The defendant contends that a judicial diversion does not constitute a conviction, and therefore, the seizure of the defendant's firearms was improper because he was not a felon in possession of firearms. However, [j]udicial diversion is a legislative largess whereby a defendant adjudicated guilty may, upon successful completion of a diversion program, receive an expungement from all official records' any recordation relating to arrest, indictment or information, trial, finding of guilty, and dismissal and

¹ The Second Supplemental Report and Recommendation adds supplemental authority and addresses an argument which was not advanced by the defendant. The Court will treat this second supplement as if it had been objected to by the defendant.

discharge pursuant to the diversion statute.” *State v. Schindler*, 986 S.W.2d 209, 211 (Tenn.1999). The effect of discharge and dismissal under the diversion statute “is to restore the person ... to the status the person occupied before such arrest or indictment or information.” *Id.* (citing Tenn. Code Ann. § 40-35-313(b) (1997)). See *State v. Denton*, 2010 WL 4069264, *3 (Tenn. Crim. App. 2010). Thus, the defendant’s argument is without merit.

After careful and *de novo* consideration of the Report and Recommendation and supplemental Reports and Recommendations of the United States Magistrate Judge, the defendant’s objection to the Report and Recommendation and supplemental Reports and Recommendations, the defendant’s motion to suppress, the response of the government, and for the reasons set out in the Report and Recommendation and supplemental Reports and Recommendations, which are incorporated by reference herein, it is hereby **ORDERED** that the Report and Recommendation and supplemental Reports and Recommendations are **ADOPTED** and **APPROVED**, and that the defendant's motion to suppress is **DENIED**. [Doc. 7].

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE